

## DEPARTMENT OF BENEFIT PAYMENTS



May 6, 1974

ALL-COUNTY LETTER NO. 74-81

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: OVERPAYMENTS DUE TO ADMINISTRATIVE ERROR

REFERENCE:

County Letters Nos. 74-2, dated January 3, 1974, and 74-57, dated March 29, 1974, advised you of developments in the case of Oliva v. Carleson. This lawsuit relates to regulations which permit the recoupment of overpayments due to administrative error through the grant adjustment method.

On May 1, 1974, the Supreme Court of California vacated the Writ of Supersedeas (stay order) issued by the Court of Appeal for the Third Appellate District. The effect of this action by the Supreme Court is to reinstate enforcement of the Amended Writ of Mandate issued by the Superior Court on December 27, 1973, described in County Letter No. 74-2. It was apparently the intent of the Supreme Court in issuing its order that county welfare departments proceed as if the Writ of Supersedeas had not been issued.

I therefore have no legal alternative but to again direct you, effective immediately, to cease using the grant adjustment method to recoup overpayments due to administrative error where the recipient has fully met his reporting responsibility, as described in County Letter No. 74-2. You are also directed to identify all individuals who, pursuant to County Letter No. 74-57, have had their grants adjusted contrary to the Amended Writ of Mandate, and to restore to such individuals an amount equal to such grant adjustment.

OBSCURED  
ACL 77-15  
3-17-77

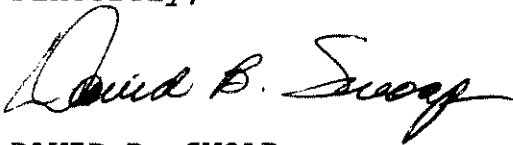
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The Oliva litigation does not affect other methods available to counties to recoup overpayments. You are not prohibited by any order in this case from requesting repayment of overpayments or from instituting collection actions in the courts, to the extent provided by current regulations.

Questions have arisen whether the Amended Writ of Mandate prohibits balancing overpayments against underpayments where the overpayment is due to county administrative error. Even though the Amended Writ of Mandate does not specifically deal with this problem, it is my belief that such balancing would violate the spirit of the court order prohibiting grant adjustments. Such balancing is therefore prohibited.

You will note that the Amended Writ of Mandate refers to EAS § 44-335.11 as one of the regulations which is subject to the injunction. This section relates to overpayments due to changes in income or need which occur too late to be reflected in the current grant. Such overpayments are not due to administrative error and may be recouped through the grant adjustment method as provided in the regulations. However, if prompt action is not taken to correct subsequent grants to reflect the change in income or need, subsequent overpayments attributable to such changes would be due to administrative error, and would be subject to the Oliva order prohibiting recoupment by the grant adjustment method.

Sincerely,



DAVID B. SWOAP  
Director

cc: CWDA